

pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

[57 FR 33268, July 28, 1992, as amended at 63 FR 13116, Mar. 18, 1998]

Subpart C—Procedures for Considering Applications

§ 2610.301 Jurisdiction of adjudicative officer.

Any provision in the Office's rules and regulations other than this part which limits or terminates the jurisdiction of an adjudicative officer upon the effective date of his or her decision in the underlying proceeding shall not in any way affect his or her jurisdiction to render a decision under this part.

§ 2610.302 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 2610.202(b) for confidential financial information.

§ 2610.303 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Office may file an answer to the application. Agency counsel may request an extension of time for filing. If agency counsel fails to answer or otherwise fails to contest or settle the application within the 30-day period, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the Act.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may

jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted for good cause by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 2610.307.

§ 2610.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2610.307.

§ 2610.305 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 2610.306 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the settlement procedure applicable to the underlying procedure. If an eligible prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.